

APPENDIX B.

DRAFT

Memorandum of Agreement

Between

US Forest Service

And

State of Washington

(DRAFT April, 1999)

MEMORANDUM OF AGREEMENT
between the
USDA FOREST SERVICE, REGION 6
and the
WASHINGTON STATE DEPARTMENT OF ECOLOGY

This Memorandum of Agreement (MOA), together with documents in the appendix is entered into by and between the U.S. Forest Service (hereinafter referred to as the Forest Service) and the Washington State Department of Ecology (hereinafter referred to as Ecology). This MOA and attached planning and guidance documents collectively represent the “Forest Service Pacific Northwest Region Water Quality Management Plan for Washington State” The Forest Service and Ecology agree that this MOA, with attachments, is the implementation plan for execution of this agreement and is a priority within their organizations. Timely implementation will prevent duplication of effort and provide coordination to meet CWA requirements and the goals of both agencies. The Forest Service and Ecology recognize financial commitments are necessary to support these increased management commitments.

Nothing in this statewide MOA shall preclude individual National Forests from entering into agreements with Ecology regional offices to meet specific local needs. Any such local MOA shall fit within the parameters of this statewide MOA.

PURPOSE

The purposes of this MOA are:

1. For Ecology and the Forest Service to commit to the responsibilities and activities to be performed by each agency pursuant to the general water quality management guidelines and processes referenced above.
2. To ensure Forest Service activities meet Federal Clean Water Act (CWA) requirements of:
 - a. §303 (Water quality standards and implementation plans) of the Clean Water Act;
 - b. Section 313 of the Clean Water Act (Federal facilities pollution control) ;
 - c. Sections 319(b)(2)(f) and 319(k) (Nonpoint source management program) of the Clean Water Act as amended in 1987 (PL-100-4);
 - d. Executive Order 12088. (FS to provide citation.)
3. To affirm the Forest Service as the Designated Management Agency responsible for meeting CWA standards on National Forest System lands and to ensure that all waters on National Forest lands meet or exceed water quality standards for all activities.
4. To encourage and enhance communication, coordination and working relationships between the agencies and lay out a process for dispute resolution.

AUTHORITIES

The U.S. Congress has assigned the Forest Service the responsibility for managing Nation Forest System lands. Forest Service cooperation and coordination with Ecology is consistent with that legislation.

In Washington state, Ecology has received delegation from the U.S. Environmental Protection Agency (EPA) for federal Clean Water Act implementation. Chapter 90.48 RCW gives Ecology authority and responsibility to protect and manage water quality,

Section 303(d) of the Clean Water Act lists water bodies and outlines a program for addressing water body segments having limitations on their quality that preclude them from meeting beneficial uses. The Forest Service is responsible for those water bodies within the National Forest System.

Section 313 of the Clean Water Act and Executive Order 12088 require the Forest Service to adhere to the goals set forth in the State Surface Water Quality Standards (i.e. Chapter 90.48 RCW).

Section 319 of the Clean Water Act requires states to develop nonpoint source pollution management programs to qualify for Federal grants to control nonpoint source pollution. This MOA is a component of that program.

An important component of the State Surface Water Quality Standards is the concept that nonpoint source pollution is best controlled by prevention land use practices designed to prevent and mitigate water quality impacts. These best management practices (BMPs) for forest management on non-federal lands are codified in the state Forest Practices Rules (Title 222 WAC). Activities on National Forest System lands are expected to meet or exceed the requirements that apply were those activities on state-regulated lands. BMPs are also recognized as the primary mechanism to control nonpoint source pollution from activities other than forestry such as recreation, mining, fish and wildlife restoration, livestock grazing, fire suppression etc.

MUTUAL RESPONSIBILITIES

Staff from the Forest Service Regional Office and Ecology headquarters will meet at least annually. Ecology's Water Quality Program Manager (or designee) will initiate contact with the Forest Service Region 6 representative to set this meeting, to be held in the last quarter of each calendar year. Suggested topics for the annual meeting are:

- Discussion of the "Annual Forest Reports" for each National Forest in Washington;
- Discussion of Ecology's Watershed Planning efforts in areas pertinent to National Forests;
- Water bodies and segments listed on the §303(d) list.
The USFS and Ecology will jointly, on an annual basis and in conjunction with local offices, develop a priority list of those basins with critical water quality problems to which management and restoration can be directed. The water-quality limited list (§303(d)) and the Forest Service §303(d) Protocol will be the starting point for the joint list. The agencies will also work jointly to obtain funding to support work to address the problem areas on the list.
- Water quality restoration plans (WQRPs) and water quality cleanup plans (Total Maximum Daily Load [TMDLs] plans) on National Forest system and adjacent lands;
- Discussion of monitoring programs and results;
- Coordinate to ensure water quality standards are being met;
- Ascertain the need for joint public involvement efforts for appropriate projects;
- Funding priorities;
- Updating of contacts lists;
- Other topics as mutually agreed and needed for coordination (such as changes to laws and regulations)

Other governmental agencies may be invited to the annual meeting with agreement from both the Forest Service and Ecology. Other meetings, as appropriate, will be held between the Forest Service and Ecology (and other state agencies with cooperative water quality management responsibilities) to evaluate compliance with the terms of this MOA.

The agencies will seek opportunities to coordinate and collaborate on management activities, such as monitoring, water quality planning, and restoration projects. The agencies will conduct joint reviews of

project implementation areas with field staff to determine if BMPs are being implemented and if management efforts (e.g. WQRPs, BMPs, etc.) are effective in protecting water quality.

Forest Service Responsibilities.

The Forest Service will manage its lands and activities to meet or exceed state water quality standards. The Forest Service agrees to:

1. Implement site specific BMPs to protect water quality and beneficial uses that meet or exceed state BMPs for similar activities and conditions.
2. Conduct monitoring as required in Forest Plans to determine, in consultation with Ecology, the implementation of BMPs and their effectiveness in meeting water quality standards. The Forest Service will normally measure BMP effectiveness for turbidity and temperature. The Forest Service will notify Ecology if there is a departure from this normal procedure. Ecology and the Forest Service will collaborate on monitoring other water quality parameters to be used on a project specific basis.
3. Take appropriate corrective action in the field, on National Forest System Lands, to remedy exceedances of state water quality standards. Notify appropriate Ecology regional office when water quality problems (such as hazardous materials spills, water discoloration from excessive sediment, etc.) are noted on nonfederal lands in the vicinity of National Forest System lands. In an emergency situation (such as a spill), agencies will take appropriate “first response actions” in accordance with expertise and training, and notify state, local and/or federal agencies with jurisdiction.
4. Coordinate with Ecology in development and implementation of Water Quality Restoration Plans and Clean Water Action Plan (CWAP) activities..

Forest Service Reporting Requirements to Ecology

Each year the Forest Service develops an Annual Forest Report which includes monitoring information (including for TMDL compliance), WQRP activities, and CWAP status. The Forest Service will send these National Forest-specific reports to the Department of Ecology Water Quality Program Manager by December 31 of each year.

Ecology Responsibilities

Ecology is the lead agency for planning and implementing the Clean Water Act. They are to ensure that Forest Service programs meet or exceed Clean Water Act requirements. It is noted that other State agencies, such as the Department of Natural Resources, carry out activities related to water quality management under separate cooperative agreement with Ecology. Ecology agrees to:

1. Provide review and input on National Environmental Policy Act processes and documents, such as Environmental Assessments, Environmental Impact Statements, etc. The Forest Service will contact the appropriate Ecology office.
2. Provide input to interdisciplinary teams to help develop/identify alternatives and mitigation measures for proposed land management activities (e.g. timber management, grazing, mining, vegetation management, special uses, recreation, etc) for protecting water quality.
3. Provide technical information to the Forest Service, as requested.
4. Notify local Forest Service offices if water quality problems are noted on or in the vicinity of National Forest System lands.

5. Coordinate with the Forest Service in development of Water Quality Cleanup Plans (TMDLs) and Clean Water Action Plan (CWAP) activities..
6. Work with the responsible Forest Service officials to obtain appropriate corrective action when management activities (past or present) are causing water quality standards to be exceeded.
7. Coordinate issues of water quality management that arise between the Forest Service and state agencies pertaining to water quality regulatory responsibilities.

Ecology Process to Certify Forest Service Management Activities

It is Ecology's responsibility to certify general water quality BMPs and current Forest Plans as being consistent with the Clean Water Act. The certification process requires the evaluation of state BMPs against Forest Service BMPs, a processes for designing and implementing BMPs and a process for addressing differences between the two sets of BMPs. The underlying evaluation criteria will be whether or not Forest Service BMPs meet or exceed water quality standards.

The State BMPs for forest practices are the water quality related forest practices rules (WAC 222) promulgated by the Washington Forest Practices Board and adopted by reference by the Department of Ecology (Ch. 173-202 WAC). Non-forestry BMPs for other land management activities are those developed and accepted by Ecology and other agencies and which may or may not be codified (such as BMPs in the Natural Resources Conservation Service's Field Office Technical Guide).

When Ecology determines that Forest Service BMPs and BMP processes meet or exceed state-adopted BMPs, Ecology shall certify the included Forest Service BMPs in a letter to the Regional Forester from the Ecology Water Quality Program Manager or designee.

When Ecology or the Forest Service determines through BMP effectiveness monitoring that Forest Service BMPs are providing less resource protection than the adopted or approved state BMPs, the Forest Service shall review the ineffective BMPs for amendment. Any proposed amendments to the Forest Service BMPs shall be reviewed for certification by Ecology. The state "antidegradation" policy goes into effect if Forest Service BMPs are being met, but water quality standards are not achieved.

Non-Forestry BMPs

It is the intent of the Forest Service and Ecology for management activities to meet Clean Water Act standards. Activities will be directed toward that end and Ecology may certify other non-forestry related Forest Service BMPs on a case-by-case basis. Examples of these types of activities might be grazing, mining, vegetation management, special uses, recreation, or other activities with a potential for affecting water quality.

RESPONSIBILITY AND COORDINATION

The Director of Ecology and the Region 6 Regional Forester are the responsible officials for ensuring implementation of this Agreement. The names and addresses of specific contacts are in the appendix.

The Director of Ecology hereby assigns the primary responsibility to coordinate implementation of Ecology aspects of this MOA to the Water Quality Program Manager.

The Forest Service Regional Forester hereby assigns the primary responsibility to implement this MOA to the Director of Natural Resources in the Forest Service Regional Office in Portland, Oregon.

DISPUTE RESOLUTION

This dispute resolution process may be invoked by either or both of the parties. If possible, the parties should agree on how much time to spend on this process and what outcome they want to achieve.

Both agencies are committed to work together to meet the requirements of the Clean Water Act and other requirements. Should disputes arise, they will be resolved at the most local level possible. The local offices of each agency (either the Ranger District or Supervisor's Office for the Forest Service, and the Regional Office for Ecology) will outline the issue describing the background, including a problem statement, what the issues are, why the issue is not resolved, a description of alternatives examined describing pro's and con's, and a recommendation. They may request assistance from the Forest Service Regional Office, Ecology headquarters, or both.

If the above approach fails, the Forest Service Regional Office and Ecology headquarters will assess the issue and describe a method(s) for resolution. They will meet with local staff for input and discussion.

Should the above approaches fail the issue will be written up for the Regional Forester and the Director to discuss and resolve.

Other agencies or entities (such as EPA) may be requested to assist at any step.

ADMINISTRATIVE

1. This MOA may be periodically revised, updated, or refined as necessary, by mutual agreement by both the Forest Service and Ecology.
2. This MOA will remain in effect unless replaced by another MOA, terminated by mutual consent of the parties, or canceled by 30 days' written notice from one party to the other party.
3. Nothing herein shall be construed as obligating or as involving either party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively available for this work.
4. This MOA will serve as the basis for any cooperative interagency job positions, or monitoring projects, that may be established to help fulfill the commitments herein.
5. Nothing in this MOA detracts from obligations of any other MOA by either agency.

We, the undersigned officials responsible for implementing this MOA and applicable attachments, hereby commit the necessary resources to the extent possible to effectively implement all aspects of this MOA.

We understand that successful implementation of the MOA and the accompanying attachments by the Forest Service and Ecology will: 1) satisfy State and Federal nonpoint source pollution requirements; 2) better ensure water quality protection on National Forest System lands, and 3) will constitute the basis for continuing formal designation by the Governor of the state of Washington of the Forest Service as the implementing agency for nonpoint source pollution control on lands under its jurisdiction.

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Regional Forester

Director

Pacific Northwest Region

Date: _____

Date: _____

APPENDICES of ATTACHMENTS

FOREST SERVICE AND ECOLOGY PLANNING AND GUIDANCE DOCUMENTS

Forest Service or Federal documents

1. FEMAT – Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl;
2. Interior Columbia Basin Management Project Program;
3. Northwest Forest Plan;
4. Clean Water Action Plan (Including Unified Watershed Assessment);
5. Forest Service and Bureau of Land Management Protocol for Addressing Clean Water Act Section 303(d) Waters..

Department of Ecology and State Documents

1. Water Quality Standards for Surface Waters of the State of Washington - Chapter 173-201 WAC;
2. 1998 §303(d) Listing of Impaired Water Bodies
3. Water Quality Standards for Surface Waters of the State of Washington (Chapter 173-201 WAC);
4. Forests and Fish Report (Feb. 22, 1999)

AGENCY CONTACTS

Forest Service

Department of Ecology

Ecology Spill response contacts